107 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Gulf South Pipeline Company, LP   Docket Nos. RP03-64-001
RP03-64-002

ORDER ON REHEARING AND COMPLIANCE

(Issued June 17, 2004)

1. On November 5, 2002, Gulf South Pipeline Company, LP (Gulf South) filed proposed tariff sheets to revise existing tariff provisions related to shipper creditworthiness. On December 5, 2002, the Commission issued an order accepting and suspending the proposed tariff sheets, subject to refund and the outcome of a technical conference.[1] Gulf South filed revised pro forma tariff sheets January 28, 2003. The Commission accepted the revised pro forma tariff sheets, subject to modification based in part on comments filed, and directed Gulf South to file revised actual tariff sheets with an effective date of May 5, 2003.[2] Various parties have requested rehearing on a number of issues addressed in the May 5 Order. On June 4, 2003, Gulf South Pipeline Company, LP (Gulf South) filed revised tariff sheets to comply with the May 5 Order.[3]

2. In this order, the Commission accepts Gulf South's revised creditworthiness provisions, subject to modification, to be effective May 5, 2003. The Commission also rules on the issues presented for review on rehearing. This order is in the public interest because it protects appropriate interests of Gulf South, its customers, and other interstate gas transmission market participants by permitting the implementation of reasonable tariff provisions regarding shipper creditworthiness.

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[1] Gulf South Pipeline Company, LP, 101 FERC ¶ 61,279 (2002). The Technical Conference was held January 16, 2003.

[2] Gulf South Pipeline Company, LP, 103 FERC ¶ 61,129 (2003) (the May 5 Order).

[3] See Appendix A.

I. <u>Background</u>

3. On November 5, 2002, Gulf South filed proposed tariff sheets, pursuant to NGA section 4, to implement more stringent creditworthiness provisions in section 5 of the General Terms and Conditions (GT&C) of its tariff. Several parties protested the filing.

4. On December 5, 2002, the Commission accepted Gulf South's proposal and suspended its effectiveness until May 5, 2003, or an earlier date specified by subsequent Commission order, subject to refund and the outcome of a technical conference.[4] On January 16, 2003, staff convened the technical conference. Gulf South clarified certain issues and agreed to modify its proposed tariff sheets to reflect concerns that were raised at the conference. On January 28, 2003, Gulf South filed <u>pro</u> <u>forma</u> tariff sheets reflecting the modifications discussed at the technical conference. Certain parties filed comments and protests in response to Gulf South's filing.

5. On May 5, 2003, the Commission issued an order accepting Gulf South's creditworthiness provisions subject to modification. The Commission found that the proposed tariff sheets, as modified, would benefit the pipeline and its customers by permitting Gulf South to implement reasonable tariff provisions concerning shipper creditworthiness. As noted, various parties filed requests for rehearing of the May 5 Order, which are discussed and resolved below.[5]

II. <u>Compliance Filing</u>

6. In its compliance filing, Gulf South states it has made certain revisions to its proposed creditworthiness provisions to reflect the changes required by the May 5 Order. Notice of Gulf South's filing was published in the <u>Federal</u> <u>Register</u> on June 6, 2003, with motions to intervene and protests due on or before June 16, 2003. Centerpoint Energy Entex and Atmos Energy Corporation, Louisiana Division (Entex/Atmos) filed a request

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[4] <u>See</u> 101 FERC ¶ 61,279 (2003).

[5] Parties seeking rehearing include Entex/Atmos, UMDG, Calpine, NiSource Distribution Companies (NiSource), American Gas Association (AGA), Mobil Gas Service Corporation (Mobil Gas), Wilmut Gas Company and The City of Vicksburg, Mississippi.

for clarification and comments. The United Municipal Distributors Group (UMDG), Indicated Shippers, [6] and Calpine Energy Services, L.P. (Calpine) filed comments and a protest. [7]

III. Rehearing/Compliance Issues

A. Evaluation of Creditworthiness

1. May 5 Order

7. Gulf South proposed that customers transporting gas (primarily local distribution companies or "LDCs") for the purpose of resale to retail residential gas consumers be presumed to be creditworthy, provided that such presumption could be rebutted. Gulf South based the presumption on four factors: (1) the LDCs concerned have a state-imposed obligation to serve human-needs customers and a right to pass through the costs of such interstate pipeline service, (2) LDC use of no-notice service (NNS) reduces risk of imbalances, (3) LDCs have a long-standing favorable business relationship with Gulf South, and (4) many LDCs take service under Gulf South's Small Customer Option (SCO). Gulf South argued that the rebuttable presumption would address in a rational manner the unique issues presented by a class of customers with similar obligations but various business models.

8. The Commission found that the rebuttable presumption is not the appropriate mechanism to recognize the creditworthiness of these shippers.[8] More specifically, the Commission stated that the language employed is vague and potentially discriminatory. Further, the Commission found no basis for treating differently two entities with the same credit rating. Finally, the Commission found the rebuttable presumption unnecessary because Gulf South will calculate a credit rating, by use of objective standards including the shipper's past relationship and payment history with Gulf South, where a shipper and its parent do not have their own independent rating.[9] Legitimate differences between shippers can thus be recognized.

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[6] Members of Indicated Shippers include: BP America Production Company, BP Energy Company, Chevrontexaco Natural Gas, A Division of Chevron U.S.A. Inc., and Shell Offshore Inc.

[7] The revisions, comments, and protests are discussed below. Gulf South states it has modified certain other parts of the tariff to comply with the May 5 Order. These are sections 5.3(c)(iii), 5.3(d), f.3(e), and 29.2.

[8] May 5 Order at P 31 (2003).

[9] May 5 Order at P 33 (2003).

9. Six parties, including Gulf South, seek rehearing.[10] Citing Northern,[11] they argue that the presumption is neither unreasonable nor unduly discriminatory. The presumption, they state, is not absolute, grants LDCs no competitive advantage in securing capacity, and is easily cured of any vague language issues. Further, they argue that giving proper weight to the four factors, identified by Gulf South as unique characteristics of regulated LDCs, shows those LDCs to constitute a class different from other shippers. LDCs are allowed to pass through, on a dollar for dollar basis, transportation capacity costs associated with interstate gas pipeline tariffs.[12] It is precisely because of this passthrough, they state, that LDCs pose substantially less credit risk to Gulf South, and that the rebuttable presumption is justified by factual differences.[13]

10. UMDG states that public service obligations have required its members to maintain access to Gulf South's pipeline system, even after unbundling, and that Gulf South's revenue stream from LDC service will continue even in the face of an LDC bankruptcy. UMDG's members are stated to be different from gas and power producers which may have alternative means of transportation and can use alternative fuel sources. UMDG states its members use NNS service, typically exhibit low potential for imbalances, and are entitled to protection against loss of surplus distributions from Gulf South's cash-out account caused by other customers whose imbalances are larger than those of UMDG members.

11. Ultimately, the parties argue, LDCs will be subject to the same clear, objective creditworthiness standards applying to all Gulf South's customers. Failure to meet any one of the standards of section 5.2(b) (vii) requires an LDC to provide security just like

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[10] Gulf South, UMDG, Entex/Atmos, Nisource, Mobil Gas, and AGA.

[11] Northern Natural Gas Company, 102 FERC ¶61,076 (Northern) at P 68 (2003). There, the Commission approved differentiation between small customers and other customers for purposes of determining creditworthiness. The May 5 Order stated (P 33, n. 14) that the Commission would review such a proposal by Gulf South, should one be filed, under Northern.

[12] Entex/Atmos note that the Supreme Court has held that, under the filed rate doctrine, interstate pipelines' rates must be given binding effect by state utility commissions in determining local retail rates, citing Nantahala Power and Light Company, 476 US 953 (1986). AGA, a national trade association representing 190 LDCs operating nation-wide, confirms that state regulatory authorities are barred from prohibiting an LDC from recovering costs assessed under FERC filed rates.

[13] Mobile Gas, for instance, notes "no other Gulf South customer class may employ such regulatory mechanisms to recover interstate gas commodity and transportation capacity costs." See rehearing application filed by Mobile Gas at 6.

any other customer. Several parties argue that the May 5 Order errs by suggesting that reliance upon a shipper's credit rating alone suffices to measure a prospective shipper's credit.[14] UMDG cites Trailblazer for the need to consider shippers' individual circumstances and not just credit ratings alone,[15] and claims that the proposed presumption is justified by such a review.

12. UMDG restates its own proposed amendment to Gulf South's rebuttable presumption, and argues that the Commission accepted largely identical language in Northern to apply to that pipeline's small customer class.[16] UMDG states that the Commission erred by failing to consider and address this proposed tariff language. Entex/Atmos argue that the Commission's policy has been to differentiate between classes of service when the facts support such treatment, and that caselaw supports that policy.[17]

2. Discussion

13. The Commission will deny rehearing. The use of a rebuttable presumption would offer an advantage to the LDCs qualifying, but no showing has been made why only such shippers are entitled to a rebuttable presumption or why such a presumption is necessary for these shippers to obtain a reasonable review of their creditworthiness status. It is clear that, in the situation in which an LDC fails to meet the credit rating requirements of the tariff, Gulf South can take into account any relevant factors in evaluating whether a shipper should be deemed creditworthy. Gulf South has established the objective standards by which its evaluation of creditworthiness will be accomplished.[18] That evaluation will take into account the individual circumstances of each of its shipper customers, including each of the LDCs seeking a rebuttable presumption of

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[14] For example, Entex and Atmos state that the Commission has not required pipelines to use credit ratings as the sole determinant of creditworthiness. Citing Natural Gas Pipeline Company of America (Natural), 102 FERC ¶ 61,355 (2003); Tennessee Gas Pipeline Co. (Tennessee), 102 FERC ¶ 61,075 (2003).

[15] Trailblazer Pipeline Co., 103 FERC ¶ 61,225 (Trailblazer) at P 58 (2003).

[16] UMDG proposes that the presumption should apply to any individual customer transporting gas for resale to retail residential customers which is "current with its payments to Gulf South and has not been delinquent over the past twelve months (with good faith billing disputes excepted)." See rehearing application of UMDG at 15.

[17] Citing Metropolitan, Edison Co. v. FERC, 595 F.2d 851, 857 (D.C. Cir. 1979); TransCanada Pipelines Ltd. v. FERC, 878 F.2d 401, 413-414 (D.C. Cir. 1989).

[18] See section 5.2.

creditworthiness. [19] Gulf South's decision to find an LDC creditworthy must ultimately be based on an analysis by Gulf South of the very factors upon which the proponents of the presumption rely.

14. The benefit of a right to pass through to its local customers the costs of interstate pipeline service is one factor. Another may be the manner in which the LDC has in the past used its passthrough rights in resolving past obligations to Gulf South.[20] Gulf South's LDCs use no notice service substantially, which reduces the potential for substantial imbalances, and Gulf South has followed the example of the Northern case and now proposes to establish a separate mechanism for the small customers.[21] That proposal is supported by good reason and, as discussed below, we approve it here. However, it does not persuade us that the rebuttable presumption proposed is in any way necessary to assure the rights of the LDC customers on Gulf South. Those rights seem quite adequately protected by the system, as modified, now in place.

3. Compliance Filing

15. Gulf South states it made requisite changes to sections 5 and 5.1 of its tariff. Gulf South states it has clarified section 5.2(b) to reflect that when a customer's credit rating is at the lowest investment grade level and the short-term financial outlook for that customer as established by the applicable credit agency is negative, Gulf South may require additional analysis of the customer's credit status prior to concluding that the customer is creditworthy.

16. Gulf South states this same process will apply to the review of a parent's credit rating. Gulf South notes this clarification was required to conform these provisions with the other changes required by the May 5 Order to section 5.2(b), where Gulf South was required to establish objective credit criteria. Gulf South states section 5.2(b)(i-x) has been revised, as required by the May 5 Order, to include the objective and financial

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[19] See Creditworthiness Standards for Interstate Natural Gas Pipelines, Docket No. RM04-4-000, 69 Fed. Reg. 8587, Notice of Proposed Rulemaking, FERC Stats.& Regs., Proposed Regulation Preamble, ¶ 32,573 (February 27, 2004) (Creditworthiness NOPR). The NOPR proposed that each pipeline's tariff disclose the objective criteria to be used in evaluating a shipper's creditworthiness. We did not propose a defined set of criteria for evaluating creditworthiness, since the pipelines "need to take into account the individual circumstances of a shipper in making their determinations." NOPR at P 19.

[20] We find no good reason to limit the analysis, as UMDG proposes, simply to the issue of a customer's currency in payment obligations, with no delinquency over the past 12 months.

[21] See section 5.2(c).

analysis criteria that will be used to determine whether a shipper is creditworthy when a credit agency's rating is not utilized, or where the credit rating is at the lowest investment grade rating with a negative outlook.

17. Gulf South states it has eliminated the rebuttable presumption that LDCs are creditworthy. Also, Gulf South proposes that small customers may be deemed creditworthy based upon their past history. Gulf South states that section 5.2(c) recognizes the unique attributes of Gulf South's small customers and is consistent with the provision approved by the Commission in Northern.[22] Gulf South states it has modified section 5.2(d) to provide that written notification will be given to a customer determined to be non-creditworthy. Gulf South notes that this notice will provide the reasons supporting its determination of non-creditworthiness.

18. Indicated Shippers filed a protest stating that Gulf South should file revised tariff language stating that the pipeline can only consider a parent's creditworthiness if the shipper does not have its own credit rating, or the shipper is relying on a parental guaranty. Indicated Shippers' protest also states that if an uncreditworthy shipper asks Gulf South to review whether an upgrade of the shipper's status is justified, as ordered by the May 5 Order, Gulf South should be required to finish its review within two business days and to rescind any security requirements determined to be unnecessary, including any prepayment, within one business day.

19. Further, Indicated Shippers argue that Gulf South improperly seeks to use, in its analysis of an unrated customer's creditworthiness, two unnecessarily vague standards, including ongoing litigation in which the shipper may be engaged and the effects of general economic conditions (and economic conditions specific to the customer's business). Such provisions, state Indicated Shippers, are unnecessarily vague. [23]

4. Discussion

20. The types of information that Gulf South proposes to consider, including information on lawsuits or judgments, and general economic conditions and economic conditions more specific to the shipper, are sufficiently relevant and objective indications of financial health that Gulf South should be permitted to consider, as long as it ensures that the shipper has the ability to challenge the resulting determination.[24] Shippers will be able to challenge Gulf South's determinations of non-creditworthiness, and shippers

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[22] 102 FERC ¶ 61,076 (2003).

[23] Citing Northern, 102 FERC ¶ 61,076 (2003); Tennessee, 103 FERC ¶ 61,275 (2003).

[24] See Natural Gas Pipeline Company (Natural), 106 FERC ¶ 61,175 at P 80 (2004); Tennessee, 103 FERC ¶ 61, 275 at P 45(2003).

are therefore protected against abuse of Gulf South's discretion, while Gulf South has the flexibility to determine a shipper's creditworthiness based on relevant financial information on a case-by-case basis.

21. As to rescinding prepaid security requirements, the Commission has accepted provisions requiring the pipeline to return collateral within 5 business days of determining a shipper is creditworthy, and we will require Gulf South to adopt a similar provision, subject to change based on the outcome of the Creditworthiness NOPR.

22. Re-evaluation by Gulf South of the creditworthiness of a shipper should be accomplished within 5 days of receipt of the request for re-evaluation, in accordance with the standard approved by the Wholesale Gas Quadrant (WGQ) of the North American Standards Board (NAESB) and proposed for adoption in the Creditworthiness NPOR.[25] The Commission will otherwise accept this aspect of Gulf South's compliance filing.

23. Indicated Shippers note that the May 5 Order rejected Gulf South's proposal to use the ratings of corporate affiliates in evaluating the creditworthiness of a customer, and directed Gulf South to revise its tariff accordingly, and that Gulf South revised section 5.1(b) to delete reference to corporate affiliates in its compliance filing. However, Indicated Shippers state the revised language in section 5.1(b) still gives Gulf South the right to request the credit rating of the customer's parent, which is an affiliate of the shipper.

24. Indicated Shippers state that it is its understanding that Gulf South will only consider a parent's creditworthiness if the shipper does not have its own credit rating, pursuant to section 5.2(b), or the shipper is relying on a parent guaranty. Indicated Shippers state in these circumstances it would be appropriate for Gulf South to consider the creditworthiness of a parent. Thus, Indicated Shippers state Gulf South should file revised tariff language stating that the pipeline can only consider a parent's creditworthiness if the shipper does not have its own rating, or if the shipper is relying on a parental guaranty.

25. The Commission is not persuaded such a clarification is necessary. As noted , Gulf South has been required to provide (in section 5.2) the objective criteria against which information concerning a shipper's parent will be evaluated. [26] Those criteria involve the specific situations accepted as appropriate by Indicated Shippers (i.e., no rating for the customer, and where a parent is guarantying customer's performance).

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[25] See Natural, 106 FERC at P 63.

[26] See May 5 Order at P 24; see also Tennessee, 103 FERC ¶61,275 at PP 40-41 (2003).

Should neither customer nor parent have credit ratings, the criteria stated in section 5.2 (b) will be applied. We have approved those criteria and thus we will deny Indicated Shippers' request.

B. Assignment of Shipper's Terminated Capacity

1. May 5 Order

26. Under Gulf South's proposal, end-users or LDCs not holding firm transportation capacity (but which had been served under such terminated/suspended capacity rights) and meeting Gulf South's credit requirements could assume suspended or terminated contracts. Assignment of suspended or terminated capacity to end-users or LDCs would thus be permitted, in order to assure such continued service, outside the Commission's capacity release program.

27. The Commission, relying on Natural,[27] found that it would be unduly discriminatory not to afford the same assignment rights to other shippers, especially producers, who may be relying on the terminated capacity.[28] The Commission also noted that use of the proposed procedure would not allocate capacity to those that value the capacity the most, as established in Order No. 636-A,[29] and directed Gulf South to remove this provision from its tariff.

28. Several parties request rehearing,[30] arguing that the Commission's over-riding obligation is to protect consumers of natural gas, and that such protection requires that end-users and LDCs are able to rely on the continuing availability of pipeline capacity to city-gates, especially during heating seasons. Mobile Gas states that Gulf South's proposal would permit LDCs to continue no-notice service, consistent with their public service obligations.[31] Further, the proposed assignment procedure is argued to enhance NNS, consistent with Commission policy, and to recognize NNS distributors' high valuation of Gulf South capacity, through their payment of firm NNS rates which are higher than rates for interruptible service. Finally, states Mobile Gas, producers on Gulf South's system can be assured of supplies moving to market with creditworthy NNS distributors as pre-arranged capacity releases.

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[27] Natural, 102 FERC ¶ 61,355 at P 63 (2003).

[28] May 5 Order at PP 73-74.

[29] Order on Reh'g, Order No. 636-A, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 30,950 (August 3, 1992).

[30] AGA, Mobile Gas, and Nisource.

[31] Rehearing request of Mobile Gas at 11-14.

29. NiSource construes the portion of Order No. 636-A cited in the May 5 Order as referring to situations where contracts have expired, not when contracts have been terminated for credit reasons. Nisource notes the potential here for even non-creditworthy entities to secure and sell long-term capacity needed by LDCs for their local services. NiSource argues that such LDCs and end-users should not have to pay market prices for such needed capacity when its value sky-rockets in heating seasons. NiSource states that for the Commission to allow LDC customers to face a "purely market solution" to possible sky-rocketing values is error.[32]

2. Discussion

30. The Commission denies rehearing on this issue and affirms our finding that this provision is unjust and unreasonable, consistent with our finding in Natural.[33] The result of its implementation would be to allow the allocation of capacity in an unduly discriminatory manner, which is contrary to the NGA and Commission policy in the absence of supportive evidence. In the first place, not allowing other shippers, including a producer who may be relying on the capacity of a terminated shipper's contract, the same right to assume the assignment of a terminated shipper's capacity as that which would be afforded LDCs and end-users is unduly discriminatory, and those seeking rehearing have not demonstrated why such discrimination is justified.

31. Second, operation of this provision would not allocate capacity to those that value it the most because it would allow an LDC or end-user an unfair advantage in acquiring capacity even though other shippers may be willing to pay more for the capacity. Once a contract is suspended or terminated, the capacity returns to the pipeline to be allocated on an open access basis to all shippers looking for capacity.

32. Those seeking rehearing have failed to show why a special preference is needed here. Under the Commission's capacity release system, an LDC or marketer that is subject to losing its capacity would be able to assure that its end-users continue to receive service by reassigning that capacity to its end-users or another marketer committed to service those end-users as long as they are willing to match the highest bid for the capacity.[34] The Commission sees no reason why end-users not willing to pay the maximum rate, or match the highest valued bid, should be given preferential access to discount capacity as compared to others who may value the capacity more. Accordingly, the Commission directs Gulf South to remove this provision from its tariff.

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[32] Rehearing request of Nisource at 9-10.

[33] Natural, 102 FERC & 61,355 at P 63.

[34] Such reassignment would have to take place when the shipper still has release rights, before the contract is suspended or terminated.

C. Prepayment Issues

1. May 5 Order

33. Gulf South proposed a sliding security scale under which the level of security a customer was required to post increased with the term of the contract. Gulf South argued that its proposal recognized that a longer term firm contract poses greater financial risk to a pipeline and to its creditworthy customers than a short-term firm contract. The Commission rejected that approach and required Gulf South to limit the amount of security it could require to three months of demand charges on all firm contracts.[35] Gulf South submits that the Commission's order is flawed because: 1) the energy industry and financial environment have recently changed dramatically, and 2) the Commission ignored clear evidence of why 3 months' prepayments are inadequate. Gulf South cites the decline in creditworthiness experienced by many formerly highly rated companies,[36] demonstrating the types of financial risks current in today's markets.[37]

34. More specifically, Gulf South states that it showed un-rebutted evidence of declines in credit ratings for eight of Gulf South's shippers, representing 32 percent of Gulf South's MDQ in 2002. 35 percent of Gulf South's firm MDQ is stated to be held by customers with a below investment grade rating and another 2 percent of its MDQ by customers that are barely investment grade. Other customers have short-term debt refinancing needs. Gulf South reiterates two historical examples of shippers declaring bankruptcy and argues the Commission's 3-month standard would have had limited effect on the financial exposure Gulf South faced as a result of such bankruptcies. Gulf South states that the normal billing cycles of pipelines make 3 months of security worthless for all service contracts over 90 days in length. Finally, Gulf South states that the most troublesome results of the 3-month standard are the abusive bidding practices it encourages and the ease with which 3-months prepayment can be used by non-creditworthy shippers to secure pipeline capacity at the expense of creditworthy customers. Gulf South states that, at a minimum, it should be able to treat a non-creditworthy customer's bid as of lower value than a bid submitted by a creditworthy shipper.

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[35] May 5 Order at PP 35-36.

[36] Gulf South request for rehearing at 6, citing the examples of Enron, Dynegy, Mirant, Reliant, and Calpine.

[37] Nisource argues that the Commission has not shown good reason for a blanket prohibition on a prepayment requirement of any period longer than 3 months, especially since the Commission has permitted longer periods where "circumstances warranted." Rehearing request of Nisource at 11-12, citing Southern Natural, 99 FERC ¶ 61,345 at P 101.

2. **Discussion**

35. We deny Gulf South's request for rehearing. The Commission's policy, in effect since the issuance of Order Nos. 436 and 636, requires no more than 3 months of collateral for service on existing facilities.[38] The Commission chose this specific standard for existing service to balance the risks to the pipeline from potential contract default against the need under open access service to ensure that existing pipeline services are reasonably available to all shippers across the pipeline grid. Gulf South presents neither argument nor evidence distinguishing its case from the application of the Commission's policy.

36. The Commission adopted the 3-month collateral requirement because 3 months corresponds to the time period it takes a pipeline to terminate a shipper in default and be in a position to remarket the capacity.[39] Three months of collateral thus protects the pipeline against revenue loss while it completes the termination process and is in position to remarket the capacity. A pipeline reflects in its return on equity the business risk of remarketing capacity.[40] The rate of return component of the pipeline's base rates, in part, reflects normal financial risks associated with business operations, including contracting

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[38] See Florida Gas Transmission Co., 66 FERC ¶ 61,140 at 61,261 n.5&6, order vacating prior order, 66 FERC ¶ 61,376 at 62,257 (1994); Southern Natural Gas Company, 62 FERC ¶ 61,136 at 61,954 (1993); Valero Interstate Transmission Company, 62 FERC ¶ 61,197 at 62,397 (1993); Texas Eastern Transmission Corporation, 41 FERC ¶ 61,373 at 62,017 (1987); Williams Natural Gas Company, 43 FERC ¶ 61,227 at 61,596 (1988); Pacific Gas Transmission Company, 40 FERC ¶ 61,193 at 61,622 (1987); Tennessee Gas Pipeline Co. (Tennessee), 40 FERC ¶ 61,194 at 61,636 (1987); Natural, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); Northern Natural Gas Co. (Northern), 37 FERC ¶ 61,272 at 61,822 (1986).

[39] The 3-months for termination are as follows: The first month's collateral reflects the practice of billing shippers after the close of the prior month. See 18 C.F.R. § 284.12(a)(1)(iii), Standard 3.3.14 (billing by the 9th business day after the end of the production month). The second month accounts for the time period given the shipper to pay, and an opportunity to cure a default. The third month reflects the requirement that the pipeline provide 30 days notice prior to termination. See Northern, 102 FERC ¶ 61,076 at P 49, n.10; 18 C.F.R. section 154.602.

[40] See Ozark Gas Transmission Company, 68 FERC ¶ 61,032, at 61,107-108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); Williston Basin Interstate Pipeline Company, 67 FERC ¶ 61,137 at 61,360 (1994) ("Bad debts are a risk of doing business that is compensated through the pipeline's rate of return").

risks. To the extent Gulf South believes that its allowed rate of return is too low, it can file a general rate case to support a higher rate of return.

37. Gulf South's discussion of the evidence it submitted, regarding the potential of financial loss possibly resulting as a function of certain of its customers' credit ratings, thus misses the mark. The correct manner in which to reflect the degree of potential risk Gulf South faces in its customer base is in the development of an appropriate rate of return, not the extension of collateral requirements. After the specific level of risk a pipeline faces is assessed and identified in its rate of return, the Commission's 3-month prepayment policy speaks to a different aspect of the pipeline's over-all financial health, i.e., protecting the pipeline against revenue loss while it terminates contractual obligations and remarkets its capacity.

38. Moreover, the amount of collateral demanded of a shipper does not directly reduce the remarketing risk of the pipeline. For example, suppose a shipper's credit rating falls so that it is no longer creditworthy under Gulf South's tariff. Even if the shipper provides collateral in accordance with the scale proposed by Gulf South, but then defaults, Gulf South is subject to the risk of remarketing the capacity.[41] Further, requiring increased collateral increases the current risk of default from a shipper that cannot provide such expensive collateral. In short, the Commission determined that, in balancing the interests of the pipeline and subsequent shippers on existing facilities, the potential benefit to the pipeline of longer collateral requirements for service on existing facilities is not sufficient to offset the harm to shippers and to the principle of open access service from having shippers required to provide larger collateral. Gulf South fails to justify more stringent security requirements.

39. Gulf South maintains that, at the least, in evaluating requests for new service it should be able to treat a non-creditworthy shipper's bid as having lower value than that of a creditworthy shipper. But Gulf South has not presented a plan in this filing as to how such an evaluation could be conducted in a non-discriminatory manner. Moreover, the Commission has requested comment on this issue in the Creditworthiness NOPR, and has asked all industry participants to suggest ways in which such an evaluation could be conducted. Since this filing does not contain a detailed proposal as to how such an evaluation could be accomplished, and the Commission has opened a Rulemaking proceeding to consider this issue, the Commission will deny Gulf South's rehearing request for an advisory opinion on whether it can utilize such a procedure.

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[41] Even a one-year prepayment could not guarantee recovery of costs of facilities with service lives of 30-50 years or contracts in excess of one year.

3. Compliance Filing

40. Gulf South states that section 5.3 has been modified to limit the amount of security to three months. Gulf South states it has also modified its tariff to specify the amount of required security that will be part of its notification to the customer. As required by the May 5 Order, a customer will have five business days to provide at least one month of the security along with any past due, undisputed amounts. The remainder of any required security will be due within thirty calendar days. Gulf South states that similar modifications, as they relate to timing of payment/security, have been made to section 18.5 regarding late payments.

41. Gulf South states section 5.3(b) has been modified to provide a means for a customer to earn interest on cash prepayments, and the interest will be based upon the actual rate earned or the overnight rate available to Gulf South for any time period where the security funds are not on deposit. Gulf South states this provision provides the shipper the opportunity to earn interest on prepayments as required by the Commission while eliminating the risk and any attempts by customers to engage in arbitrage. The Commission finds that the proposed revisions comply with this aspect of the May 5 Order.

42. On June 16, 2003, Calpine filed a protest stating that Gulf South's proposed revision of section 5.4 does not comply with the May 5 Order and should be rejected. As originally proposed, section 5.4 provides that if Gulf South constructs new facilities pursuant to section 24.4 of its tariff (which relates solely to receipt and delivery facilities and not to mainline expansions or laterals) it may require a cash prepayment deposit or an irrevocable letter of credit from a non-creditworthy customer in an amount of the cost of the new facilities. However, Calpine states that, although the May 5 Order accepted this provision, in its compliance filing Gulf South expanded the language to include facilities constructed under section 7(c) of the NGA or pursuant to any other provision of the tariff. Calpine argues this new language increases the original application of section 5.4 beyond appurtenant facilities pursuant to section 24.4, and is not consistent with the Commission's orders in Tennessee and Natural.[42]

43. In addition, Calpine states the Commission should reject Gulf South's language in section 5.4 to effect collateral reductions only once a year. Calpine states that allowing Gulf South to maintain collateral up to a year after the cost has already been recovered is

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[42] Calpine cites Tennessee, 103 FERC ¶ 61,275 (2003), and Natural, 102 FERC ¶ 61,355 (2003).

unwarranted and unnecessary, and would produce a built-in over-collateralization for most of the year. Calpine asserts that Gulf South should be required to reduce its collateral requirements for lateral construction on a monthly basis.

4. **Discussion**

44. The Commission rejects Gulf South's expanded language in section 5.4 because it is beyond the scope of the May 5 Order. Filings made to comply with Commission orders must include only those changes required to comply with the order, not additional proposals. Moreover, the Commission policy is that collateral requirements for new mainline construction should not be in the tariff, but should be negotiated as part of the precedent agreement between the shipper and the pipeline.[43]

45. Gulf South has failed to comply with other directives of the May 5 Order. The May 5 Order directed Gulf South to include language providing that it will reduce the collateral requirements as the shipper pays off the cost of the facility, accept alternative forms of financial protection, such as parental guarantees, as well as language providing that where facilities are to be constructed to serve multiple shippers, an individual shipper's obligation should be no more than the proportionate share of the cost of the facilities. Gulf South is directed to revise its tariff accordingly.

46. Collateral is required to protect the pipeline against the potential loss of revenue should the shipper default during the term of the contract. Collateral, therefore, should be returned to the shipper in proportion to the reduction in contract term. For example, if the shipper signs a 36-month contract for the expansion, it should receive a return of collateral of 1/36 per month.

47. The language should also include other changes, consistent with Tennessee and Natural. The language should state that Gulf South will mitigate the consequences of a default, ensuring that the shipper is responsible only for the difference between what it would have paid and the amount the pipeline can recover from another customer.[44] In addition, the language should state that Gulf South is only permitted to recover the cost of the facilities once, either through transportation rates, or in the event the shipper defaults, by means of one of the assurances of future performance provided Gulf South.[45]

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[43] See North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 15 (2003); Calpine Energy Services, L.P. v. Southern Natural Gas Company, 103 FERC ¶ 61,273, P 37, n.27 (2003).

[44] See Tennessee, 105 FERC ¶ 61,120 (2003).

[45] See Natural, 102 FERC ¶ 61,355 (2003).

D. Collection of Demand Charges On Suspended Contracts

1. May 5 Order

48. In the May 5 Order, the Commission rejected proposed tariff language that would have permitted Gulf South to continue to bill a customer even though service was suspended.[46] The Commission explained that, while a shipper must pay Gulf South for service up to the date service was suspended, the shipper should not be held responsible for future charges. Gulf South claims error in the Commission's conclusion that a pipeline's right to suspend service does not include the right to collect demand charges during suspension. Gulf South states that, by suspending service, it has limited the customer's ability to create additional damages, and that the customer dictates the length of the suspension period. Gulf South also claims that the May 5 Order is not clear whether such demand charges are permanently foregone and that its rights to sue for damages under state law must remain available. If the market value of suspended firm capacity drops under the contract price, the suspended non-credit worthy customer is given the opportunity game the process, curing the breach only if the value of the capacity rises. To deny Gulf South the right to collect demand charges during the suspension period is argued to reward shippers for breaching their contracts.

2. Discussion

49. The May 5 Order noted that Gulf South's proposal is inconsistent with Tennessee. There, the Commission conducted an extensive analysis of the issue raised and explained that when pipeline service is suspended, a shipper's service is stopped, and while the shipper must pay the pipeline for service up to the date service was suspended, it should not be held responsible for future charges, since no further service is provided.[47] We apply the same reasoning here. When service to a shipper is suspended, no service is provided to that shipper, since the shipper's payment of tariff charges is made for purpose of actual use of the capacity involved, not just the initial reservation thereof.

50. The non-breaching party to a contract (in this case, Gulf South) must elect whether to continue the contract or suspend the contract, but it cannot suspend its performance while requiring performance by the other party. Gulf South can elect to suspend service or continue to provide service and sue the shipper for consequential, unmitigated damages caused by its contractual breach. Consequently, Gulf South's concern about the May 5 Order's impact on its ability to seek damages under state law is without merit.

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[46] May 5 Order at P 54-56.

[47] See 102 FERC ¶ 61,075 at P 32; order on reh'g, 105 FERC ¶ 61,120 at PP 10-14 (2003); see also Natural, 106 FERC ¶ 61,175 at P 53 (2004).

51. The May 5 Order noted that, during the period of suspension, Gulf South could sell the service to others. Gulf South states, however, that it cannot sell the suspended firm capacity to another customer, since Gulf South does not offer an interruptible/recallable firm service, [48] and thus can only sell the capacity on an interruptible basis. The point is that one of Gulf South's options, upon suspending a contract, is to resell under its tariff access to the capacity used to provide what has become the suspended service. Gulf South need not suspend service, but can choose rather to continue to require payment of reservation charges, and exercise its rights to sue for damages. The fact of the matter is that Gulf South, like other pipelines in similar circumstances, "must decide which remedy to elect: suspension of service or continuation of the contract and the shipper's obligation to pay."[49]

52. Gulf South could also seek to terminate service upon the required 30 days notice, but cannot continue to insist on payment of reservation charges. Gulf South offers no good reason why its suspension of service by reason of a shipper's failure to maintain creditworthiness should be treated differently.[50]

53. Gulf South has not justified a change in its tariff allowing it to charge for suspended service, since its tariff has not provided for such a charge. Gulf South has not provided sufficient support for allowing the pipeline to refuse to provide service to shippers, while still collecting reservation charges as if such service was still available. Thus, consistent with Tennessee, the Commission will deny rehearing.

3. Compliance Filing

54. In its compliance filing, Gulf South proposes changes to section 18.5 (Late Payment) that modify the steps it will take under the tariff in the event a customer is delinquent in paying its invoices. Gulf South proposes to add new language that permits

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[48] Citing Questar Pipeline Co., 99 FERC ¶ 61,129 at P 15 (2002). The Questar order discussed a Transwestern Pipeline Company proceeding, 88 FERC ¶ 61,206 (1999) (see 99 FERC at P 15, n. 8) where the pipeline proposed a limited term firm transportation service for capacity not otherwise under firm contract. No such service is involved here.

[49] See PG&E Gas Transmission, Northwest Corporation, 105 FERC ¶ 61,382 (PG&E) at P 41 (2003).

[50] The Commission has allowed pipelines the added remedy of suspending service for failure to provide collateral on shorter notice than termination of service. But the provision of this additional right does not carry with it the consequent ability to charge for service that the pipeline has chosen not to provide. The pipeline should not be entitled to repudiate its obligation under the contract while still insisting that it benefit as if the contract was still in effect. See Creditworthiness NOPR at P 44.

it to terminate (instead of suspend) service, seek payment of past due amounts, all future amounts due under the service agreement, interest, and any other relief available in a court of competent jurisdiction, in the event the customer fails to make timely payment of past due amounts within five business days after Gulf South gives notice to the customer of the delinquency.

55. Gulf South states that section 5.3(c)(ii) has been modified to provide that, if Gulf South elects to terminate a customer's service agreement due to that customer's failure to provide security or to pay any non-disputed obligations, Gulf South will give the customer and the Commission thirty days written notice of its intent to terminate. Gulf South states it has removed its right to suspend a contract as a result of the Commission's rejection of its proposal to collect demand charges during periods of suspension, and has replaced that right with the right to terminate after providing the requisite thirty days notice.

56. Entex/Atmos and UMDG assert that Gulf South should clarify why it has chosen to substitute termination language for suspension language, and why it seeks to incorporate tariff language which contemplates enforcement of legal remedies and contractual damages which the Commission has no jurisdiction or power to grant. Entex/Atmos argue that section 18.5 should not be used as a vehicle to codify what legal remedies Gulf South may elect to pursue in state court in the event of a contractual dispute. They state that incorporation of such language could be misconstrued as Commission assent to the proposition that Gulf South would be entitled to all future amounts due under the service agreement. Because the May 5 Order contains no such suggestion, they assert the proposed tariff language should be rejected.

57. Similarly, UMDG also states the language should be rejected. UMDG states that to the extent the new language is incorporated by reference into service agreements with its customers, the proposed expanded list of remedies could be construed as remedies that the customer has acceded to when there is no such agreement in fact. In addition, UMDG asserts that some of the remedies are very broad, such as "all future amounts due under the service agreement," arguing that it is inappropriate to expand the tariff to address court remedies.

58. UMDG also states the new language is ambiguous, as it states Gulf South may terminate service if a customer does not provide payment within the five-business-day window following notice by Gulf South, but elsewhere the language reflects thirty-days notice of termination of any service agreement. UMDG cannot determine whether "terminate service" means the same thing as "terminate any service agreement(s)." UMDG asserts that Gulf South should clarify that it cannot terminate service before a thirty-day period expires following notice to the customer, and that it may not terminate service until the underlying service agreement has been terminated at the culmination of the proper notice period.

4. Discussion

59. The Commission rejects Gulf South's proposed language, which states that it may seek payment of the past due amounts, all future amounts under the service agreement, interest, and any other relief available. Gulf South's cognizable state court legal rights are beyond the scope of the May 5 Order in this proceeding and involve matters of contract interpretation under the facts and circumstances of any case that may be presented for adjudication in such a court.

60. Finally, the Commission agrees with UMDG that Gulf South's new termination language is not clear. In order to eliminate any ambiguity, the Commission directs Gulf South to clarify its tariff to state that it cannot terminate service to a customer before the thirty-day period expires following Gulf South's notice to the customer of its failure to make timely payment, and that it may not terminate service until the underlying service agreement has been terminated at the culmination of the proper notice period.

E. Parental Guaranty

1. May 5 Order

61. The Commission rejected Gulf South's proposal to accept as security parental guaranties only from guarantors with at least a BBB credit rating by Standard & Poor's, finding no reasonable basis to evaluate "a parent company's creditworthiness under different standards than those applied to shippers that establish creditworthiness without securing a guarantee."[51] Gulf South argues on rehearing that collection under a guaranty may require litigation against the guarantor, and that guarantees do not provide the same level of protection as irrevocable letters of credit or cash prepayments. Further, Gulf South claims that evidence presented in this proceeding shows that the cost of obtaining a letter of credit is directly tied to a customer's credit rating and, therefore, argues that it is reasonable for Gulf South to mitigate the risk that the guarantor might also default, by increasing the minimum credit standard of the guarantor to BBB.

2. Discussion

62. The Commission denies rehearing. Gulf South has failed to demonstrate that the credit rating of a guarantor should be higher than that required of the party it is guaranteeing. The parent is standing in the shoes of the affiliate by guaranteeing its

[51] May 4 Order at P 17. A shipper establishing its own creditworthiness without use of a parental guaranty would be required to have a BBB- rating by Standard & Poor's.

payments and thus should be subject to the same creditworthiness requirement.[52] Gulf South's argument about the costs of collecting on a guaranty versus the use of collateral payments with the risk of litigation is not the appropriate comparison.[53] When a shipper is creditworthy, the pipeline receives no collateral. Should that shipper default, the pipeline would have to incur litigation costs to recover owed amounts. If a shipper relies on a creditworthy parent as a guarantor, the pipeline still has the same risk of potentially having to litigate to recover amounts under the guaranty. Indeed, the pipeline is better off with a parental guaranty, because it can seek recovery from both the shipper and its parent.

F. Timeline for Providing Collateral/Contract Termination

1. May 5 Order

63. Gulf South proposed in section 5.3(e) to reduce the period during which shippers must post additional security from 15 days to 5 days. If a shipper failed to maintain any collateral assurances, Gulf South could suspend or terminate a shipper's service upon 5 days' notice. The Commission rejected the proposal, while providing Gulf South the opportunity to adopt a reasonable, balanced approach as follows: [54] When a shipper loses its creditworthiness status, the shipper must, within 5 business days, pay for one month of service, in advance, to continue service. This procedure would allow the shipper to have at least thirty days to provide the next three months of security for service. If the shipper fails to provide the required security within these time periods, Gulf South may provide simultaneous written notice that it will terminate service in thirty days if the shipper fails to provide security. Gulf South should also provide written notice to the Commission at least thirty days prior to terminating a shipper's service, consistent with 18 C.F.R. § 154.602.

64. On rehearing, Gulf South argues the Commission erred by failing to make a finding under section 5 of the NGA that the current provision (requiring 15 days notice) is unjust and unreasonable.[55] Non-creditworthy shippers, states Gulf South, do not need

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[52] Gulf South's logic seemingly leads to the counterintuitive result that a child's mortgage guaranteed by a parent is somehow more risky than a mortgage issued to the parent alone.

[53] In fact, given Gulf South's contention about the value of three-months collateral, it is somewhat surprising that it is now arguing that such collateral is more valuable to it then a parental guaranty of the entire contract amount.

[54] The Commission cited Northern, 102 FERC ¶ 61,076 at P 49; Tennessee, 102 FERC ¶ 61,075 at P 18. See May 5 Order at P 50, n.25 (2003).

[55] Citing ANR Pipeline Co. v. FERC, 771 F. 2d 507 at 514 (D.C. Cir. 1985).

more than 5 days notice, [56] and the effect of the Commission's ruling is that the pipeline will be at the end of the line of creditors. Gulf South argues that its experience shows that 15 days is too long a period and has resulted in capacity being "tied up in bankruptcy proceeding."[57] It is not sound policy, states Gulf South, if it ensures that more pipeline capacity becomes subject to the jurisdiction of the bankruptcy courts.

2. <u>Discussion</u>

65. The Commission denies rehearing. Under the Natural Gas Act, the termination of shipper's contract is an abandonment of service. The Commission's regulations and policy require the pipeline to provide both the shipper and the Commission with 30 days notice before abandoning service.[58] This provides the Commission with the ability to ensure that the termination is in the public convenience and necessity. Gulf South's proposal to require termination within five days is inconsistent with the regulation and Commission policy since it does not provide any opportunity for Commission review of the service abandonment.

66. The Commission declines to change its policies because of the possibility that such policies may prevent Gulf South from terminating a shipper prior to the filing of a bankruptcy proceeding. As the Commission explained in <u>Tennessee</u>, the Commission's decision on how to regulate pipelines under the NGA cannot be determined by the effect its decisions may have on the pipeline in the event of a bankruptcy petition. Rather, it must apply the statutory requirements for just and reasonable rates and conditions of service as well as abandonment, as in this case.[59] Here the requirements for notice of contract termination are necessary for the Commission to properly administer the NGA, and override any potential effect on Gulf South from the normal operation of bankruptcy proceedings.

67. Further, Gulf South has not sufficiently supported its proposal to reduce a shipper's time period to post security from fifteen days to five days. In its initial filing, Gulf South failed to show that its proposed 5 day period is sufficient for a shipper to

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[56] Standard provisions in NAESB gas purchase contracts, states Gulf South, require posting security within 72 hours of such a request.

[57] Rehearing request of Gulf South at 23. Gulf South submits the case of "Marketer 1," who, upon being given 15 days notice of Gulf South's intent to terminate its contract, declared bankruptcy, the result being that 13,000 Dth of firm capacity was tied up in bankruptcy court for 18 months.

[58] 18 CFR § 154.602; <u>Northern</u>, 103 FERC ¶ 61,276 at P 51-56 (2003).

[59] <u>Tennessee</u>, 105 FERC ¶ 61,120 at P 19 (2003).

obtain requisite collateral for three months of service.[60] The May 5 Order provided Gulf South with the opportunity to justify a notice period as being a reasonable time period for a shipper to obtain the requisite collateral or to utilize the Northern/Tennessee approach, under which the pipeline's interests are protected by a shipper being required to pay quickly (within 5 days) for the next 30 days' of service, with the remainder of the collateral due in 30 days. In its compliance filing, Gulf South has not provided support showing that its 5-day collateral requirement provides shippers with a reasonable opportunity to obtain the requisite collateral and hence has not shown this proposal is just and reasonable.

68. Gulf South maintains the Commission did not make adequate findings under section 5 to require it to modify its existing 15 day period in its tariff. However, the May 5 Order did not require Gulf South to change its tariff provision governing the period during which shippers must post additional collateral from 15 to 30 days.[61] The Commission rejected Gulf South's proposal to revise its tariff to provide shippers with only five days notice. Thus, Gulf South is permitted to continue its current tariff requirement to provide shippers with 15 days notice to post additional security or it can adopt the Commission's Northern/Tennessee approach, as it has proposed in its compliance filing.

69. Should Gulf South propose to continue its 15-day provision, that provision will be subject to the outcome of the NOPR in RM04-4-000. In the NOPR, the Commission proposed a regulation under which a shipper that has lost its creditworthiness status must be given at least 5 business days within which to provide advance payment for one month's service, and must satisfy the collateral requirements within 30 days.

G. Title to Storage Gas

1. May 5 Order

70. Gulf South proposed that gas held in storage for a defaulting shipper could be seized by Gulf South as a means of offset for monies due. The Commission rejected the

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[60] See Natural, 106 FERC at P 49 (2004); PG&E Gas Transmission, Northwest Corporation (PG&E), 105 FERC ¶ 61,382 at P 39 (2003).

[61] Gulf South's existing tariff (Original Sheet No. 1203) provides: "Should customer not provide the required security within fifteen (15) days of demand by Gulf South, Gulf South may deny or suspend the service being furnished, and the exercise of such right shall be in addition to any other remedies available to Gulf South." Gulf South thus has the right to deny or suspend, but not terminate, service if the security is not provided within 15 days. Gulf South references no other existing tariff provision that can be construed as providing the right to terminate.

proposal, finding the proposal not justified since Gulf South is free to assert any liens under state law. On rehearing, Gulf South states that the policy announced in Northern and Tennessee has flaws.[62] Further, Gulf South states that under its tariff gas cannot be put into a storage account without the shipper's warrant that it has title free and clear of liens, encumbrances and claim. We read the balance of Gulf South's argument to claim that a "statutory lien" cannot be enforced without title to the gas involved, but that the Commission is preventing Gulf South from exercising rightful ownership rights to the title to the relevant amount of gas held in storage necessary to satisfy shipper's debts to Gulf South.

2. **Discussion**

71. The Commission denies rehearing. We affirm that Gulf South, as in Northern and Tennessee, has not provided legal justification to support its proposal to confiscate storage gas. We remain concerned that Gulf South's proposal does not adequately protect the rights of the shipper and other parties that may have an interest in the gas. We do not comprehend from Gulf South's broad arguments why it would be unable to assert viable existing rights it may have under applicable contract law to establish an appropriate level of damages and/or to apply those rights against collateral subject to such law. We do not believe that the terms of Gulf South's tariff, precluding any other interest in the stored gas at the time service from Gulf South is sought, estops other parties from asserting their rights under the law being applied in the unspecified proceedings at the heart of Gulf South's statements.

72. The Commission's purpose here is to protect as reasonably as possible the appropriate assertion of competing interests in and claims to the value of natural gas stored on Gulf South's system. Gulf South provides no reason for the Commission to allow Gulf South to extinguish all other such lawful assertions by other parties, or any example of where the Commission has allowed such advantage to a pipeline in the past. We must regard Gulf South's claims concerning its inability to protect its rights without title to stored gas as unsupported.

[62] Citing 102 FERC ¶ 61,076 at P 60; 102 FERC ¶ 61,075 at P 26. Gulf South does not articulate further in its rehearing application what the perceived flaws are. See rehearing request of Gulf South at 24. Gulf South also states without any further explanation that the May 5 Order failed to show consistency with previous, unspecified Commission decisions. Id.

H. Imbalances As Additional Security Requirements

1. May 5 Order

73. Gulf South proposed, in section 5.3(c), to include the value of imbalances into its credit limit calculation for a non-creditworthy shipper. For new shippers, the valuation would be based on ten percent of a shipper's estimated monthly usage multiplied by the estimated imbalance rate. Gulf South explained that it proposed ten percent of a shipper's estimated monthly usage multiplied by the estimated imbalance rate. The Commission approved the proposal, noting that new shippers have no prior levels to reference, and that Gulf South used the ten percent level as the imbalance level available before penalties are incurred. Further, once a new customer establishes a payment history, the ten percent level will no longer apply.

74. Calpine states that the ten percent level could lead to excessive collateral requirements, [63] arguing that review of the impact of resolving imbalance amounts through trades, which is allowed under section 20.1 of the tariff's General Terms and Conditions, shows that one percent is an appropriate level. Calpine cites Gulf South's Cash-in/Cash-out Reports and Form 11 reports for April 1, 2001, through March 31, 2002, which show that the ratio of cash-in (characterized by Calpine as the financial exposure to the cash pool, net of imbalance trading activity) to total customer usage transportation quantities never exceeds one percent. Calpine states that one percent of a shipper's estimated monthly usage is the appropriate level, consistent with section 5.3 (c) of the tariff.

2. Discussion

75. The Commission grants rehearing in part. We direct Gulf South to provide further explanation and justification for the particular level of a shipper's estimated monthly usage adopted to determine the appropriate amount of security that should be provided to address imbalances. We note that the issue of how to establish an appropriate level has been proposed for comment in the Creditworthiness NOPR.[64] The approach used by Gulf South, i.e., estimates of usage and tolerance levels, may prove less reasonable as a general pipeline standard than an amount that may vary as the shipper accumulates imbalances and its track record is developed and becomes more reflective of the risk involved with service for a particular shipper.

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[63] For example, a new non-creditworthy customer moving 100,000 Dth/d would have to post $1.5 million in gas imbalance collateral, assuming the estimated imbalance rate was $5/Dth.

[64] Creditworthiness NOPR at P 34 (2004).

76. Gulf South is directed to provide information and rationale in further support of the standard to be adopted. For example, as stated in the Creditworthiness NOPR, a shipper could be required to provide no collateral for the first month, and then be required to provide collateral based on its first month's imbalance in the second month. After that, the amount of collateral could be updated as a track record is developed. Gulf South should address these issues, along with the period of time necessary to constitute a history upon which Gulf South should be allowed to rely in appropriate protection of its interests and those of its other customers.

I. Security Retention Limits

1. May 5 Order

77. Calpine states that Gulf South's tariff could be read to allow Gulf South to retain all of the security posted on imbalance gas by a defaulting shipper, even if the gas imbalance owed is less than the posted security. Calpine also states that security could be demanded from any interruptible customer or any customer with a gas imbalance, regardless of the results of Gulf South's credit evaluation. Calpine requests that the Commission direct Gulf South to state clearly: 1) that security requirements in sections 5.3 (b) and (c) will be applied to non-creditworthy customers, and 2) that Gulf South cannot draw or retain security on imbalance gas in excess of "that which Gulf South is actually owed."[65]

2. Discussion

78. The Commission grants rehearing. Gulf South's interest in security on imbalance gas is rightfully limited to the level reflective of imbalances actually owed to Gulf South. Further, as requested by Calpine, Gulf South shall revise its tariff sheets to assure that the security requirements provided in sections 5.3 (b) and (c) will be applied to non-creditworthy customers.

J. Booking of Imbalance Recoveries

1. May 5 Order

79. Calpine argues that the Commission erred by not requiring Gulf South to book any collateral recoveries on imbalance gas defaults directly to the cash-in/cash-out mechanism. Calpine explains that Gulf South's cash-in/cash-out mechanism allows it to include gas imbalance amounts owed to the pipeline. Thus, the financial risk associated with gas imbalances is not borne by the pipeline, but is ultimately borne by the shippers.

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[65] Rehearing request of Calpine at 5.

Gas imbalance amounts are recovered in the cash-in/cash-out program (including accrued interest), and therefore the financial risk does not reside with Gulf South. Because Gulf South ultimately recovers its cash owed, including interest, Calpine asserts that there is no financial exposure to Gulf South. Thus, it is the shippers who bear the financial risk, if any, of imbalance gas amounts, and to the extent Gulf South recovers collateral amounts related to imbalance gas, those amounts should be included in the cash-in/cash-out account. Calpine requests that the Commission order Gulf South to include tariff language requiring it to include collateral recoveries associated with gas imbalances in the cash-in/cash-out account, thereby assuring that shippers obtain the intended financial relief, and Gulf South not obtain a windfall.

2. **Discussion**

80. The Commission grants rehearing. The operations of cash-in/cash-out account should reflect the collateral recoveries that benefit Gulf South in order to prevent financial relief appropriately credited to shippers from being credited to Gulf South's benefit.

The Commission orders:

(A) The requests for rehearing filed in this proceeding are granted or denied, as discussed in the body of this order.

(B) Commission accepts Gulf South's revised tariff sheets, subject to modification, to be effective May 5, 2003, as discussed in the body of this order.

(C) The Commission directs Gulf South to file revised tariff sheets with 30 days of the issuance of this order.

By the Commission. Chairman Wood concurring with a separate statement attached.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix A

Gulf South Pipeline Company, LP
FERC Gas Tariff, Sixth Revised Volume No. 1

Tariff Sheets:

Substitute Second Revised Sheet No. 101
Substitute First Revised Sheet No. 200
Substitute First Revised Sheet No. 301
Substitute Third Revised Sheet No. 400
Substitute First Revised Sheet No. 501
Substitute First Revised Sheet No. 601
Substitute Second Revised Sheet No. 603
Substitute First Revised Sheet No. 714
Substitute First Revised Sheet No. 715
Sec. Sub. Sec. Revised Sheet No. 1200
Third Sub. Third Revised Sheet No. 1201
Third Sub. First Rev. Sheet No. 1202
Fourth Sub. First Rev. Sheet No. 1203
Fourth Sub. Original Sheet No. 1204
Third Substitute Original Sheet No. 1205
Third Substitute Original Sheet No. 1206
Substitute Original Sheet No. 1207
Sheet Nos. 1208-1299
Substitute Second Revised Sheet No. 1413
Substitute Third Revised Sheet No. 1416
Sec. Sub. Sec. Revised Sheet No. 2502
Substitute First Revised Sheet No. 3605
Sec. Sub. First Revised Sheet No. 3615
Substitute First Revised Sheet No. 3702
Substitute Fourth Revised Sheet No. 3706
Substitute Third Revised Sheet No. 4000.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Gulf South Pipeline Company, LP — Docket Nos. RP03-64-001, RP03-64-002

(Issued June 17, 2004)

WOOD, Chairman, concurring:

In today's order we affirm our rejection of Gulf South's proposal to allow only LCD's or end-users to assume suspended or terminated capacity on the grounds of undue discrimination. I write separately to express the general view that parties should have an opportunity to take assignment of terminated or suspended capacity. We permit reassignment in other contexts, e.g., we allow a replacement shipper to take over a releasing shipper's contract that has been terminated due to non-creditworthiness. [1] I would be willing to entertain a proposal by Gulf South that accomplishes that goal in a manner that is consistent with our policies.

Pat Wood, III
Chairman

[1] See Northern Border Pipeline Co., 100 FERC ¶ 61,125, at 61,492 (2002); Canyon Creek Compression Co., 100 FERC ¶ 61,283 (2002); Kinder Morgan Interstate gas Transmission, LLC, 100 FERC ¶ 61,366 (2002).